

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 21-845V

UNPUBLISHED

JOSEPH NED MARTINEZ,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: December 6, 2022

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine;; Guillain-
Barre Syndrome (GBS)

Leah VaSahnja Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for Petitioner.

Julia Marter Collison, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On February 2, 2021, Joseph Ned Martinez filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that he suffered Guillain-Barre Syndrome (“GBS”) as a result of an influenza vaccine administered on November 1, 2019. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On December 28, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for GBS. On December 2, 2022, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$190,000.00 in actual and projected pain and suffering. Proffer at 1. In the Proffer, Respondent

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$190,000.00 in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

JOSEPH NED MARTINEZ,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 21-845V (ECF)
Chief Special Master Corcoran
SPU

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On February 2, 2021, Joseph Ned Martinez (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), alleging that he suffered Guillain-Barré Syndrome (“GBS”) as a result of an influenza (“flu”) vaccine administered to him on November 1, 2019. On December 16, 2021, the Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report indicating that petitioner’s GBS case is appropriate for compensation under the terms of the Act, and on December 28, 2021 the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation.

I. Items of Compensation

A. Pain and Suffering

Respondent proffers that petitioner should be awarded \$190,000.00 in actual and projected pain and suffering. This amount reflects that the award for projected pain and suffering has been reduced to net present value. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following¹: a lump sum payment of \$190,00.00, in the form of a check payable to petitioner, Joseph Ned Martinez.

III. Summary of Recommended Payments Following Judgment

| | |
|--|---------------------|
| Lump sum payable to petitioner, Joseph Ned Martinez: | \$190,000.00 |
|--|---------------------|

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

C. SALVATORE D'ALESSIO
Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

ALEXIS BABCOCK
Assistant Director
Torts Branch, Civil Division

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

/s/ Julia M. Collison
JULIA M. COLLISON
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Ben Franklin Station
Washington, DC 20044-0146
Tel: (202) 305-0102

Dated: December 2, 2022